

REMARKS

This application has been carefully reviewed in view of the Office action mailed April 17, 2002. Claims 1, 2, 8, 10, 17, 19-21, 26 and 29-31 have been amended. Claim 32 has been cancelled. Figures 2, 3 and 4 have been amended. Furthermore, paragraphs on pages 1, 8 and 9 of the Specification have been amended. Reconsideration and favorable action in this application is respectfully requested.

Drawings

The Examiner has objected to the drawings as failing to comply with 37 CFR 1.84(p)(4) because reference characters "28" and "30" have been used to designate parts on both items 20 and 42. Applicant has corrected the drawings by deleting reference characters 28 and 30 on item 20. A marked up copy of Figures 2, 3 and 4 is attached hereto together with a clean copy of Figures 2, 3 and 4. Examiner approval of these drawing corrections is respectfully requested.

Further, the Examiner has objected to the drawings as failing to comply with 37 CFR 1.84(p)(5) because reference signs 72 and 74 are not mentioned in the description. Applicant has added the reference sign "72" on page 9, first full paragraph in line 11 after the word "surface" to denote a "flat storage surface 72." With respect to reference sign 74, Applicant directs the Examiner to page 9 at the third full paragraph. Reference sign 74 can be seen in the first sentence of this paragraph denoting a "lid 74."

Specification

The Examiner has objected to the disclosure because of the following informalities: page 1 second paragraph line 3 "are" should be "is"; page 9, line 2 "when" should be "and"; line 4, insert "device" after "watering" and before the

comma; line 15, insert "to" before "detach". Applicant has made the corrections to the specification.

Claim Objections

The Examiner has rejected claims 8, 19 and 26 because in claims 8 and 26, line 2, "a" should be "an"; and claim 19, line 2, "comprise" should be "comprises." Applicant has made the appropriate corrections to claims 8, 19 and 26.

Claim Rejections – 35 U.S.C. § 112

Claims 1-19 and 29 are rejected under 35 U.S.C. 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, claims 1 and 10 recite the limitation “the center portion” in lines 14 and 15 without sufficient antecedent basis. Claim 10 recites the limitation “the continuous waterer” in lines 20 and 22. There is insufficient antecedent basis for this limitation. Finally, claim 29 recites the limitation “the continuous waterer” in lines 5 and 7. There is insufficient antecedent basis for this limitation.

Claim 1 has been amended to include on line 9, after “ramp” the limitation “having a top and a bottom and spaced apart sides and having a flat center portion disposed between said sides”. Furthermore, claim 1 has been amended on line 14 before “center” the limitation “flat.” Claim 10 has been amended to include on line 9, after “ramp” the limitation “having a top and a bottom and spaced apart sides and having a flat center portion disposed between said sides”. Claim 10 has been further amended on line 14, prior to “center” the limitation “flat.” Furthermore, claim 10 has been amended to include on line 20 after “continuous” the words “watering device”. The word “waterer” on line 20 has been deleted. Claim 29 has been amended to delete the word “waterer” on lines 5 and 7 and to include “continuous watering device” on line 5 after the word “the” and “watering device” on line 7 after the word “the”.

The rejections based upon 35 U.S.C. § 112 are believed to be obviated by the amendments.

Claim Rejections – 35 U.S.C. § 103

The Examiner has rejected claims 1, 4, 5, 20, 23 and 28 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Nos. 6,055,934 to *Burns et al.* in view of 5,501,175 to *Kemp*. The Examiner states that *Burns et al.* discloses the invention substantially as claimed. The Examiner further states that *Burns et al.* does not disclose a smooth and curved ramp to support a stream of water or a ledge attached to the upper reservoir having a curved lip and a curved cross sectional area, but that *Kemp* teaches a smooth and curved ramp to support a stream of water and a ledge having a curved lip and a curved cross sectional area for the purpose of controlling water flow over the ramp. Therefore it would be obvious to modify *Burn et al.* in view of *Kemp*.

Independent claims 1 and 20 have been amended to include a curved ramp "having a flat center portion." Although *Kemp* teaches a "smooth and curved" ramp (i.e., channel 32); channel 32 is not flat, but contains a "U" shaped cross sectional area extending along the entire length of channel 32 to simulate a flowing stream of water. Channel 32 sidewalls serve as a boundary to maintain the flow of water inside channel 32 while the water travels toward the lower container. Independent claims 1 and 20, as amended, require a flat center portion and not a "U" or "crescent" shaped channel, as taught by *Kemp*. Applicants' claimed invention permits small pets to easily access the water for drinking or amusement as water flows downward on the ramp. *Kemp's* "U" shaped channel does not permit a pet to have easy access to flowing water on the ramp. Furthermore, the curved lip and cross sectional area on the ledge in Applicants' embodiment directs a thick layer of water on the center portion of the ramp so that the ramp supports the water while traveling toward the lower container. Thus, no channel is necessary on Applicants'

ramp to direct the water. In view of the foregoing, Applicant respectfully submits that rejection of claims 1 and 20 should be withdrawn and claims 1 and 20 are in condition for allowance.

If an independent claims is not obvious under 35 U.S.C. § 103, then any claim depending therefrom is not obvious. *In re Fine*, 837 F.2d 1031 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). Because claims 1 and 20 are not obvious, claims 2-9 and 21-29, which depend from claims 1 and 20 are not obvious.

The Examiner has rejected dependent claim 2 as being unpatentable over *Burns et al.* in view of *Kemp* as applied to claim 1, in further view of 5,326,032 to Quillin. Similarly, the Examiner has rejected dependent claims 17 and 21 as being unpatentable over *Burns et al.* in view of *Kemp* as applied to claims 10 and 20 respectively, in further view of *Quillin*. The Examiner states that “*Quillin* teaches a submersible pump with all suction ports being submerged in the same field of endeavor” Applicants’ have amended dependent claims 2 and 17 to include an submersible pump enclosed and spaced apart from the drinking area to maintain safe operation of the watering device. While *Quillin* does teach a submersible pump, *Quillin* does not teach a submersible pump that is maintained separate from the drinking container to prevent a small animal from contacting the pump. *Quillin* does not teach or suggest such a configuration as claimed in claims 2 and 17 as *Quillin*’s waterfall is not used for watering small pets. *Quillin*’s embodiment, if used as a pet watering device, substantially increases the likelihood of a pet being electrocuted or injured from the energized pump because the pet can easily contact the pump while drinking from the container. Applicants’ embodiment, on the other hand, reduces the likelihood of injury to the pet by separating the submersible pump from the drinking container. This configuration prevents the pet from contacting the energized pump.

Thus, Applicants respectfully submit that amended claims 2 and 17 are allowable over the prior art.

Independent claim 10 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Burns et al.* in view of *Kemp* as applied to claim 1, further in view of 6,101,974 to *Frohlich*. Furthermore, dependent claim 29 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over *Burns et al.* in view of *Kemp* as applied to claim 20, in further view of *Frohlich*. The Examiner states that "it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the teaching of *Frohlich* to modify *Burns et al.* in view of *Kemp* in order to retain water inside a container without spilling the water while transporting it from one location to another. Applicants respectfully challenge the Examiner's combination of references.

Frohlich operates entirely different from Applicants' claimed invention. While *Frohlich* and Applicants' containers can store water, only Applicants' container is removable or separable from the continuous watering device. *Frohlich* discloses a one-piece device having a combined water storage container and bowl for easy transport. *Frohlich* states as follows:

It is a common problem that when a pet owner takes a pet out of the home environment for an extended period of time, it may become necessary to carry a water bottle or the like as well as a water bowl so that the pet can drink water as it becomes thirsty. This method of carrying a water bottle and a separate bowl can be cumbersome in that two separate items need to be transported rather than one.

See *Frohlich*, col. 1, lines 8-15 (emphasis added). If Applicants were to use the teachings of *Frohlich*, Applicants' invention would be unworkable because the entire watering device (i.e., the bowl and water storage reservoir attached together) must be transported to and from a water source. If transported while attached, as

suggested by *Frohlich*, water would inevitably leak and spill from the storage reservoir because Applicants' claimed storage reservoir valve must be maintained in the open position when installed on the watering device so as to continuously maintain a minimum water level in the lower container. The valve in *Frohlich* is switched to the closed position prior to transport thereby preventing water leakage from the storage container during transport. Applicants' invention clearly does not have such a feature when the reservoir is installed on the watering device. Thus, Examiner's combination must fail. In view of the foregoing, independent claim 10 and dependent claim 29 are allowable over the prior art.

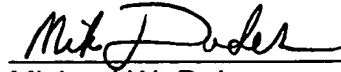
The Examiner's rejections of dependent claims 11-19, which depend from independent claim 10, should also be withdrawn.

Claims 30-32 stand rejected as being unpatentable over *Burns et al.* in view of *Kemp* as applied to claims 1-29 and further in view of *Quillin*. The Examiner states that "*Quillin* teaches a submersible pump with all suction ports being submerged . . . so as to protect a pleasant falling water sound." Applicants have amended claims 30 and 31 to include the limitation that the submersible pump is separated or spaced apart from the drinking area. As previously stated, *Quillin* does not teach the isolation of the submersible pump from the drinking area in order to protect a pet from electrocution. Thus, claims 30 and 31 are patentable over the prior art.

Claims 1-31 pending in the application are believed to be in condition for allowance and patentable over the cited prior art. Reconsideration and withdrawal of the rejections and allowance of the application are therefore respectfully requested.

Please charge any additional fee that may be required or credit any overpayment to Deposit Account No. 12-1781 of Locke Liddell & Sapp, LLP.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mike Dubner", is written over a horizontal line.

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June 4, 2002
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MARKED-UP CORRECTIONS TO SPECIFICATION

Page 1, second paragraph:

Animal watering devices that create flowing water to attract small pets [are] is well known in the art; however, these devices create unwanted noises and splashing, a nuisance to pet owners. These unwanted noises often frighten pets which makes them reluctant to approach such devices.

Page 8, paragraph starting at line 15:

Reservoir 62 comprises an opening 70 for filling the reservoir with water. When storage reservoir 62 is filled, valve assembly 63 is inserted over opening 70 to regulate water flow from the reservoir. As best seen in FIG. 2, valve assembly 63 comprises a cover 64, a stem 66 and a cap 68, all operable together to regulate the flow of water into lower container 20. Referring to FIGS. 9 and 10, cap 68 comprises a threaded interior 78 to easily attach the valve assembly to threads 82 on reservoir 62. Stem 66, which is attached to the bottom side of cover 64, is inserted into opening 80 (FIG. 10). The diameter of opening 80 is slightly larger than the stem diameter to permit the stem to slide relative to opening 80. When valve assembly 63 is installed and reservoir 62 is holding water, the weight of the water seats cover 64 on annular ridge 84 [when] and provides a sufficient seal to prevent water flow through opening 86. Thus, when carrying storage reservoir 62 from the re-fill area to the watering device, no spilling occurs.

Page 9, paragraph starting at line 6:

Once reservoir 62 is filled, it is placed above rear container 32 and adjacent water processing apparatus 42. Cover 64 and stem 66, which extends downward from reservoir 62, are pushed upward by bump 34 (FIG. 4) to allow water to flow through opening 86. When the water level in lower container 20 falls below a minimum level from use or by evaporation, water will be gravity fed into container 20 to replenish the water supply. This configuration provides substantially silent operation as pump 56 is submerged at all times during operation, regardless of whether or not water is delivered to the lower container in a non-splashing manner. After reservoir 62 empties, the owner can remove the reservoir from waterer 18 using grips 73, to detach valve assembly 63 and re-fill the device for continued use. Reservoir 62 comprises a flat storage surface 72 to allow owners to place it on flat surfaces when filling or storing the device.

MARKED-UP AMENDMENTS TO CLAIMS

1. (Amended) A continuous watering device for small pets producing minimal noise and splashing, comprising:

a lower container for holding water wherein at least a portion of said lower container has an open top to allow pets to drink from said lower container;

an upper reservoir for holding water located above said lower container;

a pump having a suction port and a discharge port wherein said suction port removes water from said container and said discharge port directs water to said upper reservoir;

a smooth and curved ramp having a top and a bottom and spaced apart sides and having a flat center portion disposed between said sides to support a stream of flowing water as [it] the water moves from the upper reservoir at said top of said ramp to the lower container at said bottom of said ramp; and

a ledge attached to said upper reservoir having a curved lip and a curved cross sectional area wherein said curved lip creates a thick and smooth water flow upon exiting the upper reservoir to reduce noise and splashing and said curved cross sectional area directs the stream of flowing water onto the flat center portion of the curved ramp so as to contain the water flow on the ramp at all times to prevent splashing and noise as the water flows downward on said ramp.

2. (Amended) A continuous watering device for small pets producing minimal noise and splashing as in claim 1, wherein said lower container includes a forward container and a rear container, said forward container having an open top to allow pets to drink from said forward container and said rear container being enclosed for maintaining said pump spaced apart from said forward container,

wherein said pump is a submersible pump whereby all suction ports are submerged to reduce noise.

8. (Amended) A continuous watering device for small pets producing minimal noise and splashing as in claim 1, wherein the upper reservoir comprises [a] an overflow drain to direct excess water from said upper reservoir to said lower container to prevent the upper reservoir from overflowing.

10. (Amended) A continuous watering device for pets producing minimal noise and splashing, comprising:

a lower container for holding water wherein at least a portion of said lower container has an open top to allow pets to drink from said lower container;

an upper reservoir for holding water located above said lower container;

a pump having a suction port and a discharge port wherein said suction port removes water from said container and said discharge port directs water to said upper reservoir;

a smooth and curved ramp having a top and a bottom and spaced apart sides and having a flat center portion disposed between said sides to support a stream of flowing water as [it] the water moves from the upper reservoir at said top of said ramp to the lower container at said bottom of said ramp;

a ledge attached to said upper reservoir having a curved lip and a curved cross sectional area wherein said curved lip creates a thick and smooth water flow upon exiting the upper reservoir to reduce noise and splashing and said curve cross sectional area directs the stream of flowing water onto the flat center portion of the curved ramp so as to contain the water flow on the ramp at all times to prevent splashing and noise as the water flows downward on said ramp; and

a removable and portable storage reservoir further comprising a valve having an open position and a closed position wherein said valve is in the closed position when not installed on the continuous [waterer] watering device so as to prevent water from leaking while said storage reservoir is being transported and said valve is in the open position when installed on the continuous [waterer] watering device as to continuously replenish and maintain a minimum water level in said lower container when water loss results from evaporation or drinking by pets.

17. (Amended) A continuous watering device for small pets producing minimal noise and splashing as in claim 10, wherein said lower container includes a forward container and a rear container, said forward container having an open top to allow pets to drink from said forward container and said rear container being enclosed for maintaining said pump spaced apart from said forward container, wherein said pump is a submersible pump whereby all suction ports are submerged to reduce noise.

19. (Amended) A continuous watering device for small pets producing minimal noise and splashing as in claim 10, wherein said lower container further comprises a pair of handles for carrying said continuous watering device.

20. (Amended) A continuous watering device for small pets producing minimal noise and splashing, comprising:

a container for holding water wherein at least a portion of said container has an open top to allow pets to drink from said lower container;

a lift tube to transport water from said container;

a pump submerged under the water in said container to eliminate noise and to remove water from the container to the lift tube;

a ramp to support a stream of flowing water as it moves from the lift tube to the container wherein said ramp includes a top and a bottom and spaced apart sides and having a flat center portion disposed between said sides to support a stream of flowing water; and

a ledge attached to said lift tube having a curved lip and a curved cross-section wherein said curved lip creates a thick and smooth water flow upon exiting the lift tube to reduce noise and splashing and said curved cross section directs the stream of flowing water onto the flat center portion of said curved ramp to prevent splashing and noise as the water flows downward on said ramp.

21. (Amended) A continuous watering device for small pets producing minimal noise and splashing as in claim 20, wherein said lower container includes a forward container and a rear container, said forward container having an open top to allow pets to drink from said forward container and said rear container being enclosed for maintaining said pump spaced apart from said forward container, wherein said pump is a submersible pump whereby the pump suction port is submerged to reduce noise.

26. (Amended) A continuous watering device for small pets producing minimal noise and splashing as in claim 23, wherein the upper reservoir comprises [a] an overflow drain to direct excess water from said upper reservoir to said lower container to prevent the upper reservoir from overflowing.

29. (Amended) A continuous watering device for small pets producing minimal noise and splashing as in claim 20, wherein a removable and portable storage reservoir is attached to said container for holding water comprising a valve having an open position and a closed position wherein said valve is in the closed position when not installed on the [waterer] continuous watering device so as to

prevent water from leaking while said storage reservoir is being transported and said valve is in the open position when installed on the continuous [waterer] watering device so as to continuously replenish and maintain a minimum water level in said container when water loss results from evaporation or drinking by pets.

30. (Amended) A continuous watering device for small pets producing minimal noise and splashing, comprising:

a container for holding water wherein [at least a portion] of said container includes a forward water container and a rear water container, wherein said forward water container has an open top to allow pets to drink from said forward water container;

said forward water container being spaced apart from said rear water container;

a lift tube to transport water from said container;

a pump submerged under the water in said rear water container to eliminate noise [and to remove] while said pump removes water from said container to the lift tube;

a ramp to support a stream of flowing water as [it] the water moves from [the] said lift tube to [the] said forward water container; and

a ledge connecting said lift tube with said [curved] ramp to direct water onto [the] said ramp to prevent splashing and noise as the water flows downward on said ramp.

31. (Amended) A continuous watering device for small pets producing minimal noise comprising:

a container for holding a volume of water to permit pets to drink therefrom,
said container including a forward container and a rear container wherein said
forward container has an open top to allow the pets to drink therefrom;

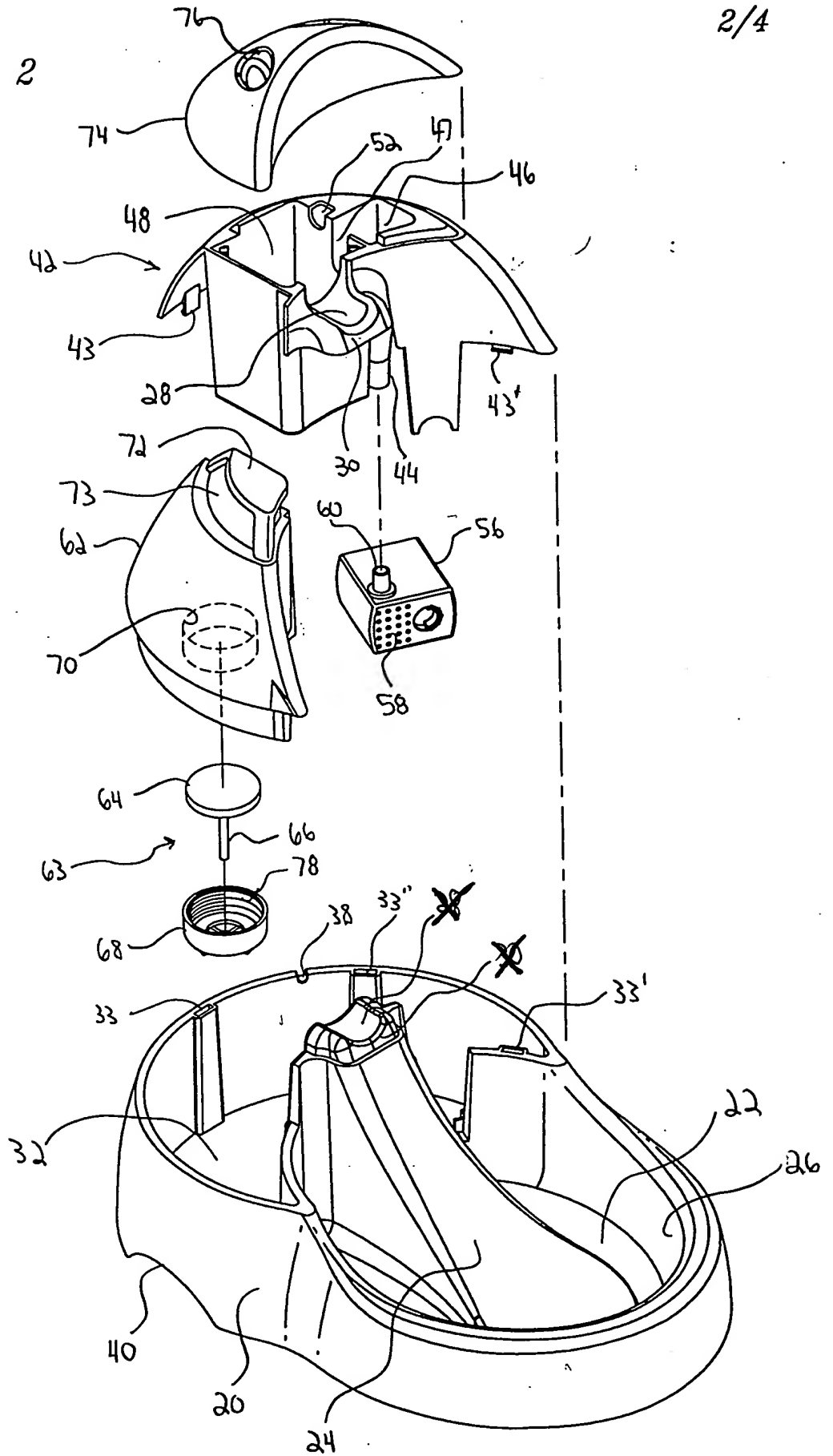
said forward water container being spaced apart from said rear water
container;

a submersible pump for circulating water located inside said container and
being disposed within said rear container wherein said submersible pump is
completely submerged by said volume of water to maintain silent operation; and

a storage reservoir for holding water wherein said storage reservoir
automatically deposits water into said container to maintain a constant volume of
water so that the submersible pump remains submerged when pets drink from the
container or when water is lost from evaporation.

32. Cancel claim 32.

FIG. 2



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FIG. 4

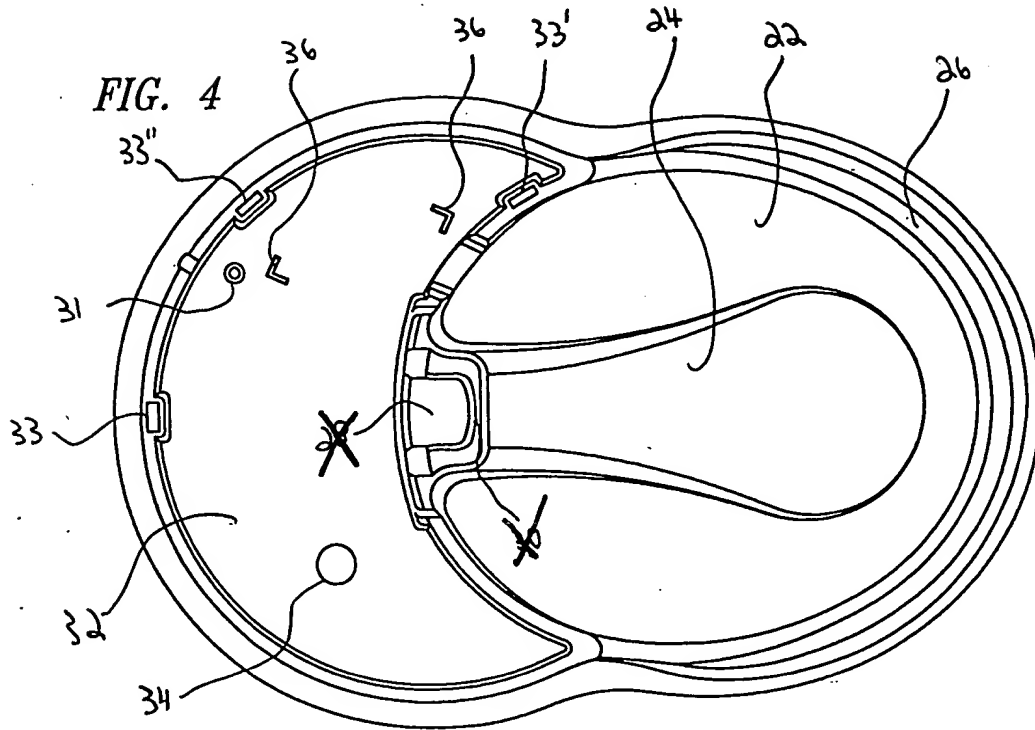


FIG. 5

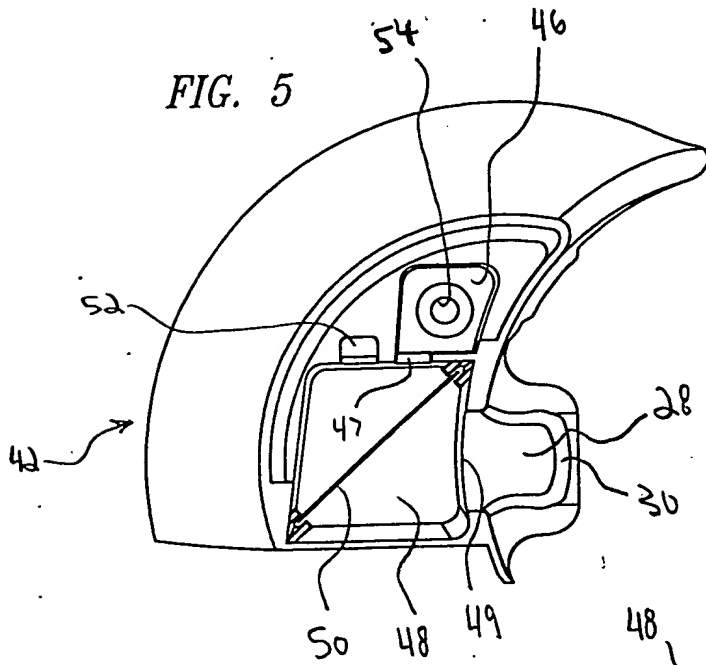
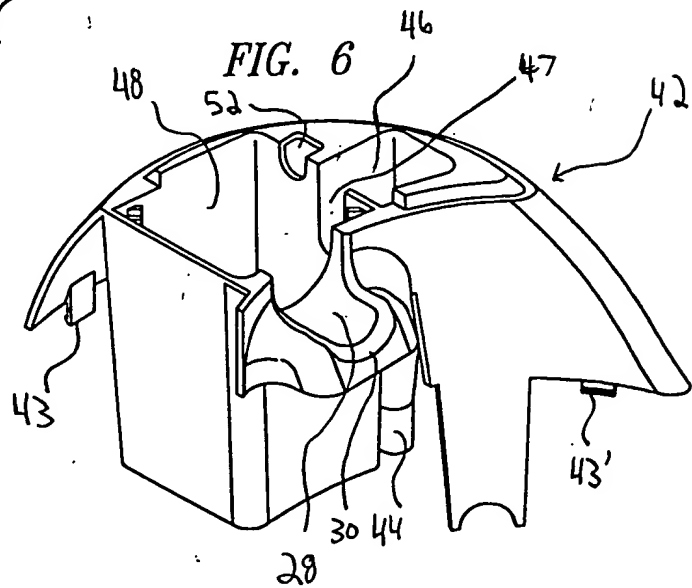
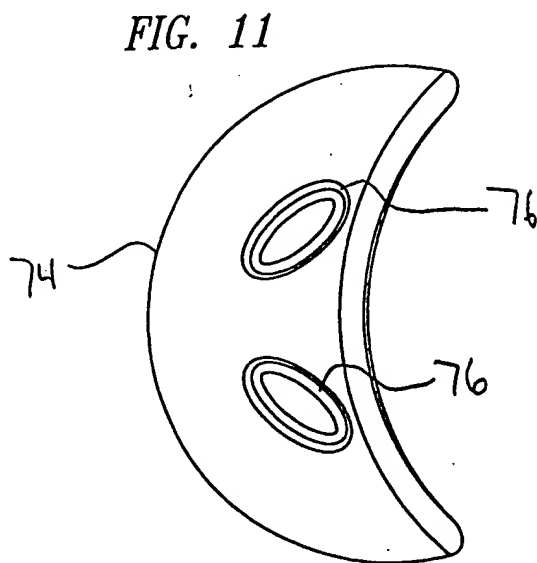
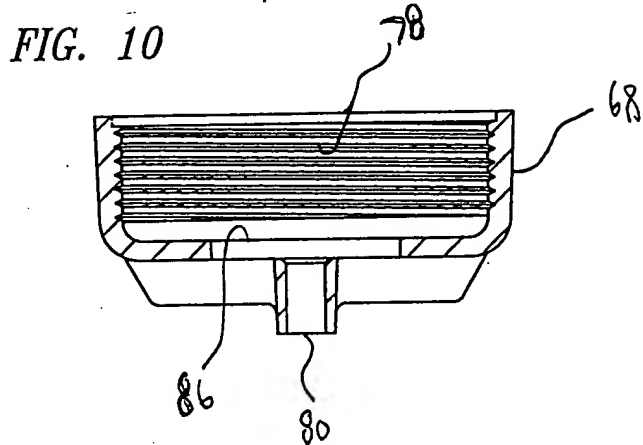
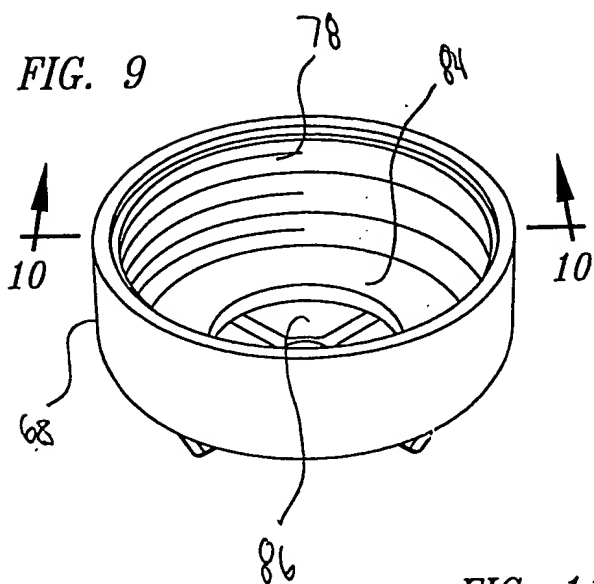
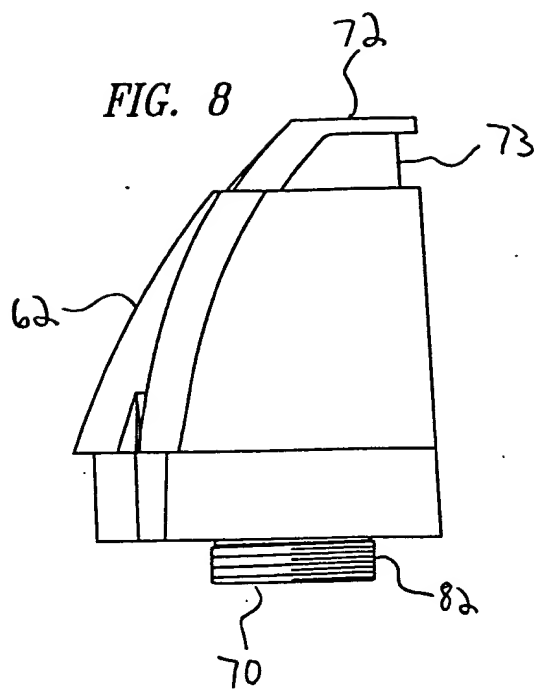
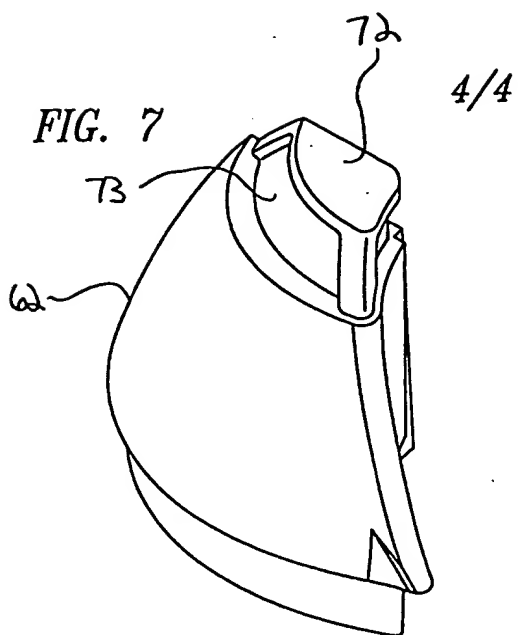



FIG. 6



Approved
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